



David B. Cohen
Mayor

CITY OF NEWTON, MASSACHUSETTS

Department of Planning and Development
Michael J. Kruse, Director

Telephone
(617)-796-1120
Telefax
(617) 796-1086
TDD/TTY
(617) 796-1089

DRAFT

CONSERVATION COMMISSION MEETING October 25, 2007 MINUTES

MEMBERS PRESENT: R. Freed, (Vice-Chair) Acting Chairman; D. Dickson, R. Matthews, S. Lunin, N. Richardson; Associates: J. Hepburn

MEMBERS ABSENT: I. Wallach, A. Green; Associates: D. Green

MEMBERS OF THE PUBLIC: Please see attached sign-in sheet.

2 Agenda items added after Agenda published:

30 Wobasso Street- Conservation Restriction

Meeting: Attorney Katherine Farrell of the Legal Department informed the Commission that she only recently learned the CR with the Newton Conservators needed to be recorded prior to the close of the sale of the property to the city, scheduled for November 9. She had sent the Commission an electronic copy of the proposed CR for 30 Wobasso, describing its intended use for passive recreation, and adds to the Fjlowed Meadow holdings. D. Dickson raised an issue about redundant language in the CR. N. Richardson questioned specific language and asked about follow-up procedures for evaluation, including annual evaluation. The Commission noted the latter is more than can be addressed in the present document. Mr. William Hagar of the Newton Conservators was present and said he had reviewed the CR and agreed to the basic form, but want the city to be responsible for enforcement and maintenance on the property.

Motion by D. Dickson to approve CR. Second by N. Richardson. Vote: all in favor. Motion passed.

1203 & 1211 Washington Street – Violation & EO(s) issued

Meeting: John Daghljan of DPW presented a re-cap of the project and said owner's contractor started work with no erosion and sediment control in place, and OOC not recorded. Sediment fell into brook and some soils contaminated with oil. Now DEP hazardous waste division involved because it is a Ch 21E violation, and they notified Wetlands Division of the Wetlands violation. DPW has established a check dam in the stream, and placed hay bales on the bank. Anne Phelps issued Enforcement Orders to both the owner, Mr. Steve Donato, and to DPW, which need to be ratified by the Commission. The owner and the city are moving toward compliance, but the city is dependent on the owner's actions at present. N. Richardson suggested the Commission return to the question of restoring the stream, and Anne is most concerned with the amount of silt released into the stream. R. Freed suggests further enforcement directives to follow, to be voted on at November 15th (next) meeting. **Motion by R. Matthews to ratify the 2 EO(s) and send cover letter noting that additional directives may follow. Second: D. Dickson. Vote: all in favor. Motion passed.**

Conservation Commission

1000 Commonwealth Avenue, Newton, Massachusetts 02459
Email: mhorn@newtonma.gov
www.ci.newton.ma.us

Return to regular Agenda:

Charles River Water Chestnut harvesting – NOI for Charles River Lakes Region Water Chestnut harvesting –and COC for expired DCR-file #239-295 – Continued – no file number

Planner Notes:

Meeting: Michael Lennon, Aquatic Control Technology, Inc., representing MA Department of Conservation & Recreation (DCR) explained they still do not have a file number because he thought DCR was exempt from paying the fee. They filed a Notice of Intent for DCR after-the-fact for work performed in June and July using a mechanical harvester. Jim Straub estimated 430 tons of aquatic vegetation (mostly water chestnut) was removed. The off-loading site for work sited in Newton was the Woerd Avenue public boat ramp in Waltham. Trucking the material off-site is more than 50% of the cost of harvesting. References were provided to staff regarding the benefits of harvesting. DCR expects funding for eighteen months to two years for harvesting. N. Richardson would like to begin conversation /discussions on education for these problems. J. Straub says it is the individual town's responsibility to educate about this problem

Mike Lennon produced a copy of the Order of Conditions for file # 239-295. **Motion by R. Matthews to issue Order of Conditions to DCR for harvesting after file number issued (presumably at Nov. 15 meeting), without DCR needing to send representative back; and, to issue Certificate of Compliance on file-295 and later OOC still open. Seconded by S. Lunin. Vote: All approved. Motion passed.**

21 Kingswood – Request for Administrative Change – Continued for new plan

Meeting: Linda Holland, owner described changes to the plan. The new plan shows all proposed changes, and a written list of changes was provided, including adding concrete pads for air conditioners, reducing the asphalt area for driveway, moving the firepit away from the river about 10 ft, and maintenance of a cleared area on the bank for access for canoe launch. The amount of required mitigation plantings is reduced, accordingly, as shown on plan. **Motion by R. Matthews to issue a letter approving the changes as “minor” and not requiring an amended Notice of Intent. Seconded by S. Lunin. Vote: All approved. Motion passed.**

63 Beethoven Ave - re-visit

Meeting: At the last meeting, the CC voted to approve subject to getting file #. Sean Leary reported a file number has been issued. The previous plan approved by the CC was not acceptable to engineering, but a revised plan acceptable to engineering was submitted today, that does not affect resource areas beyond what was previously permitted. **Motion by R. Matthews to accept minor changes to the plan and issue the Order. Seconded by D. Dickson. Vote: All approved. Motion passed.**

41 Bernard Street – RDA for native plantings in riverfront

Planner's Notes: Proposed work is considered exempt (from NOI) minor activity for planting native trees, shrubs or groundcover (not turf lawns) 10.02(2)1d. Rec. neg. det. on work, provided minimal mulch and no berming and all work 10 ft back from bank of Charles. There may be a sliver of BVW at edge of bank, but area is flat and if all planting by hand, does not need E&SC.

Meeting: Dusha Riscoff, mother of owner, and landscape architect presented the plan to plant native plants within 10 ft of the bank of the Charles, in riverfront and flood zone. **Motion by R. Matthews to issue a negative determination #5, that the work is exempt from filing a Notice of Intent under 310 CMR 10.02(2)1d, provided that minimal mulch is used and no berming occurs. Second by D. Dickson. Vote: All in favor. Motion passed.**

128 Cabot Street – NOI for foundation repair and install new basement entrance in flood zone

Planner's Notes: 2003 complaint of work at 128 Cabot St. in flood zone without filing. Work being done by prospective (now current) owner at back of house, apparently to keep water out of basement entrance area by building low wall around concrete "stoop." Planner's notes dated 10-9-03 say, "He [Mr. Young] will get a survey, remove asphalt & plant grass @ same elevation, hire an engineer and do a dry well, plus add a wall to stop the basement from flooding and provide compensatory storage," ... and indicated he would file a NOI "after the fact." No record of filing. Mr. Young has come in with pictures of wall around basement entrance – he wishes to close "gap" and build the wall higher. He maintains the flood zone is at the outside of the wall, so he should not have to provide compensatory flood storage, and says there is no room on the property to provide it. Engineering says the flood zone does include the area encompassed by the wall, and owner should provide more elevation lines, and show calculations and area for compensatory storage.

Meeting: Robert Young, owner, presented the plan. Staff provided photos. N. Richardson asked if pavement area could be reduced. Mr. Young stated that he has removed asphalt which should provide compensatory storage space. R. Freed read memo from engineering requesting additional elevations for determination of area included in flood zone. Owner agreed to continue to November 15th to obtain revised plan with more elevations.

35 Brookdale Road – NOI for addition to house in riverfront

Planner's Notes: Less than ½ the property is within the 200 ft riverfront area to Cheesecake Brook, but most of the proposed work (349 sf alteration = addition of 118 ft + deck on NOI) is in riverfront. Total impervious surface in riverfront = $335/2664 = 33\%$; after addition = 37%. Engineer says there is no alternative due to setbacks and utility easements. Have asked for plan to scale (plan submitted is not to scale and does not clearly show the easements). No mitigation is offered; no erosion and sediment control proposed.

Meeting: Scott Smyers of Bowditch & Crandall presented, with Tom Bennett, representing Ms. Nichols-Robinson, and owners present. Mr. Smyers says the work area is separated from the brook by lots of occupied space and that the riverfront area of the lot offers minimal ability to protect the interests under the act. A discussion regarding possible mitigation ensued. **Motion by R. Matthews to approve project with no special conditions. Seconded by S. Lunin. Vote: 3 in favor; N. Richardson opposed; D. Dickson abstained. Motion passed**

31 Homewood Road – NOI for addition & deck work in buffer to bordering vegetated wetland and inland bank

Planner's Notes: Work proposed should have minimal impact – owner is adding very small addition (6 x 5 ft) and extending existing 2nd floor deck over existing first floor deck and removing a set of steps. Result is no closer to BVW and kettle pond than now. I believe flags put in location approved under old expired RDA, but water level in pond should be at same elevation all around perimeter, and, as shown on plan, it is not. Rather than ask for additional info, I suggest CC approve flag A3 as closest point of BVW to proposed work, do not approve delineation of rest of BVW or inland bank, and approve project with following conditions: 1) No E&SC, but put orange construction fence at location shown for E&SC as limit of work and to prevent any traffic onto slope, 2) No stockpiling of excavated material beyond driveway area.

Meeting: Leanne Salvia of Everett Brooks presented and explained that the deck extension is a very small project within existing footprint (extending over existing deck) and removing steps closest to the pond. Staff reported area of proposed work is flat, but is less than 50 ft from bordering vegetated wetland/top of bank, which is near the bottom of a steep slope. Staff noted that some mowing by owners close to bank does not leave any vegetated buffer to help filter run-off from lawn area. Owners described work they paid for to help clean up pond, and reported there is a catch basin at the bottom of Homewood, from which storm water run-off is piped directly to pond, and as many as 17 more catch basins that empty into the pond. CC suggested owners try to mow further back to allow vegetated buffer around edges. **Motion by R. Matthews to approve project with orange construction fence instead of hay bales and silt fence. Seconded by S. Lunin. All in favor. Motion passed.**

7 Gambier Street – RDA for fence and minor site work in buffer to BVW and inland bank

Planner's Notes: Owner proposes 6 ft high fence on property line between his house and his next-door neighbor's property, and to remove about 2' of soil and replace it with loam (prior to planting shrubs). I have no concerns about fence and gravel placed on side away from wetland. However, from back corner of house to approx. top of bank is about 50 ft, and site work is proposed to go past back of house and closer to bank (and yard slopes down in this direction) with no erosion & sediment control shown on plan. Plan is not labeled to show proposed work, or to show BVW and top of bank. And, owner has planted non-native plants on other side of house in flood zone and BVW where plan shows "basin with plantings". Recommend negative determination on work if owner amends plan to show no site work closer than 50 ft (none past back corner), or if plan amended to show erosion & sediment control of staked, entrenched, & back-filled silt fence.

Meeting: Owner, Mr. Anton Geiler described the project, and showed schematic of proposed fence that would be 3 in above the ground. Commission members asked whether he planned to work past the end of the house. Mr. Geiler said he did not know yet. **Motion by R. Matthews to issue negative determination on the work with the condition that, if replacement of soil proceeded past the back of the house, the plan would have to be amended to show erosion and sediment control (silt fence). Seconded by S. Lunin. All in favor. Motion passed.**

62 Carlton Road – RDA for removal of clay tennis court and ancillary work for construction of a single family house and garage in the buffer to bordering vegetated wetland

Planner's Notes: Plan submitted shows all work out of buffer to BVW and inland bank of kettle pond.

However, at site visit only 1 flag found, no soil logs and wetland vegetation appears 15 ft higher than flag at 1 point – so questions about accuracy of delineation. Also, no landscape plan or any indication there is work proposed in buffer zone, but Planning Department has received landscape plan for buffer zone which shows removal of trees, addition of pergola and landscaping on steep slope down to kettle pond.

Meeting: Mr. Bernard Shadray, attorney, and architect P. Provineau present for the owner, as well as Enrique Darer, who is buying property. They said no work is planned past the stone retaining wall. They said site used to be higher, and the work will put back the original grade, which will be 2 ft higher at the wall and 3 ft higher maximum, so they will need a special permit from the Board of Aldermen. Since no flags, staff cannot confirm wetland line. R. Freed suggests Commission not confirm wetland line. **Motion by N. Richardson to issue negative determination on the work with the condition that, no work beyond the retaining wall. Seconded by D. Dickson. All in favor. Motion passed.**

32 Williams Street – NOI for demolition of existing house and construction of a two-family house in the 100 ft buffer zone to bordering vegetated wetland and in the 200 riverfront to the Charles (adj to Charles R path)

Planner's Notes: Rec CC approve delineation of top of bank of the Charles R for purposes of this project. Part of lot also in flood zone, but not shown on plan. No perc test done for dry well shown. During site visit observed trees removed and shrubby vegetation mown to ground w/in 4 ft of bank. Work should fall under redevelopment at 310 CMR 10.58(5)(a)-(h). Existing house is 741 sf and is 7.7 % of riverfront on lot (9595 sf of riverfront). Proposed work would cover 3800sf or 40% of riverfront, greatly exceeding 10%. Proposal cannot meet requirements of (a), (c) or (e). There is no room on lot to provide mitigation of 2:1, so cannot meet (g). I do not think (h) applies, as bank is in fairly natural condition.

Meeting: Ralph Robart (purchaser) presented. Letter of concern by abutter read into record. Applicant said he was seeking guidance from the Commission. Plan needs an alternatives analysis, and the Commission recommended applicant consultant wetland expert to advise him on how to meet the interests under the Act. Comment letter from engineer indicates concerns, including only one utility hook-up shown, but will need two for two-family house, driveway needs re-configuration, and flood zone not shown on plan. Commission asked if applicant wished to continue to address comments. Owner requests to continue two weeks. **Motion by R. Matthews to continue. Seconded by S. Lunin. Vote: all in favor. Motion passed.**

Lot 1 Kessler – Request for Administrative Change

Planner's Notes: Owner proposes to add onto front and side of house and remove some driveway area and porch. Net change is about 17 sf and is still less than previously approved sf for this lot. Rec approval of administrative change.

Meeting: Joe Porter of VTP represented and described proposed minor modifications to house. There should be negligible impact to the site. **Motion by D. Dickson to approve minor change. Second by R. Matthews. Vote: all in favor. Motion passed.** Staff will issue letter.

Violations

15 Harwich – Staff issued EO; Ratify EO

Meeting: At last meeting the Commission directed staff to get injunction, or otherwise determine the best path and action to get 15 Harwich into compliance. If no injunction, staff directed to contact I. Wallach. Anne received advice on enforcement from DEP and issued EO. Commission can decline to ratify, modify (and re-issue), or ratify Enforcement Order. **Motion to ratify by R. Matthews. Second. By S. Lunin. Vote: all in favor. Motion passed.**

21-23 Cross St – plans still not ready for filing

Meeting: Mr. Porter reported he will be representing owner.

160 Pine St – Gazebo Condos – waiting for filing

Meeting: No further information.

93 Andrew St –working to resolve

Meeting: No further information.

35 Kingswood St.- no further word from owner

Meeting: Staff reported owner called to say he could not attend.

Certificates of Compliance

19 Bernard Street

Meeting: All work on project complete, including most of plantings. Staff recommends the Commission issue Certificate. **Motion by R. Matthews to issue Certificate of Compliance. Second by S. Lunin. Vote: all in favor. Motion passed.**

Announcements & General Business:

*September 27, 2007 Meeting Minutes for approval

Meeting: Changes to attendance noted. **Motion by S. Lunin to approve minutes as amended. Second by N. Richardson. Vote: all in favor. Motion passed.**

1203 & 1211 Washington Street – Mr. Steve Donato – informal conversation

Meeting: Mr. Donato had come to meeting late and was still in audience. The present problem occurred because of a lack of communication, which was acknowledged by Mr. Donato. The Commission pointed out that there is also a need for better communication with Anne Phelps, and that the contractor for Mr. Donato needs to be more forthcoming. Mr. Donato said the oil might be coming from the dredging of the brook. The Commission made clear that it wants to work with Mr. Donato and have better communication. The Commission has an interest in having the work done and done correctly.

No further information on following at this time:

Boundary Trespass: 0 Carlisle Street status

Non-criminal ticketing

Dolan Pond C.A. invasive vegetation project

Outstanding issues – discussion

Motion by R. Matthews to adjourn. Second by N. Richardson. Vote: all in favor. Motion passed.
Meeting adjourned approximately 11:05pm.

Respectfully submitted,

Anne Phelps, Sr. Environmental Planner

Conserva/agmin10-25-07